

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RICHARD MCELVEEN,)
)
 Claimant,)
)
 v.)
)
 EXECUTIVE PLUMBING, LLC,)
)
 Employer,)
)
 and)
)
 STATE INSURANCE FUND,)
)
 Surety,)
 Defendants.)
 _____)

IC 04-507011

**ORDER DENYING
RECONSIDERATION**

Filed March 27, 2006

On February 17, 2006, Claimant filed a Motion for Reconsideration of the Commission's January 31, 2006, decision in the above-referenced case. Claimant contends that the Commission cannot simply disregard the testimony of a credible witness. Claimant argues that he is clearly entitled to PPD when Mr. Crum's testimony is given proper weight. Defendants respond that the Commission's decision was rational and supported by substantial evidence in the record.

The Commission is not persuaded by Claimant's arguments. The testimony of Mr. Crum was not simply disregarded. It was weighed in light of other aspects of the record. The Idaho Supreme Court has recognized as far back as 1975 that the Industrial Commission is not bound by a strict observance to the rules of evidence. "We have held that in those areas where the Commission possesses particular expertise, it has the discretionary power to consider reliable, trustworthy evidence having probative value in reaching its decisions, for example, *as in the area of the disability rating*, even if such evidence would not be ordinarily admissible in a court of

law.” *Thom v. Callahan*, 97 Idaho 151, 154, 540 P.2d 1330, 1333 (1975) (emphasis added). The Court further elaborated that “[t]he cause or causes of a claimant’s disability is a question of fact to be determined by the Commission in light of all the circumstances. The Commission, specializing as it does in administrative fact-finding relating to industrial accident cases, is responsible for determining causative factors on the basis of both medical and non-medical evidence.” *Id.* at 155, 1334.

The Commission carefully examined and weighed the evidence and arguments before rendering its original decision. The Commission’s decision is fully supported by the record.

Accordingly, Claimant’s Motion for Reconsideration should be, and is hereby, DENIED.

DATED this 27th _ day of March, 2006.

INDUSTRIAL COMMISSION

/s/
Thomas E. Limbaugh, Chairman

/s/
James F. Kile, Commissioner

/s/
R.D. Maynard, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __27th__ day of March, 2006, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States mail upon each of the following persons:

REED G SMITH
942 Myrtle St.
Boise, ID 83702

NEIL D MCFEELEY
P.O. Box 1368
Boise, ID 83701-1368

kas

____/s/_____